

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
)
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

MM Docket No. 95-176

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TELECOMMUNICATIONS FOR THE DEAF, INC.
REPLY COMMENTS
TO THE REQUEST FOR CLARIFICATION OF CBS CORPORATION

Telecommunications for the Deaf, Inc. ("TDI"), by its counsel and pursuant to the Commission's May 3, 1999 Public Notice hereby submits its reply comments in the above-captioned proceeding, specifically to support the initial comments of the National Association for the Deaf (NAD) and the Consumer Action Network (CAN), filed jointly, and the initial comments filed by Self Help for Hard of Hearing People (SHHH), opposing CBS's request for clarification of the Commission's Order on Reconsideration in the above docket with respect to the closed captioning obligations of program providers.¹

INTRODUCTION

Section 305 of the 1996 Telecommunications Act requires the Federal Communications Commission (FCC) to implement regulations to maximize closed captioning of video

¹ See *Comments of the National Association for the Deaf and the Consumer Action Network on CBS Request for Clarification*, Filed June 2, 1999; *Self Help for Hard of Hearing People, Inc. (SHHH) Response to CBS Corporation Request for Clarification of Commission's Closed Captioning Rules*, Filed May 26, 1999.

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programming.² On August 22, 1997, the FCC issued these rules in a Report and Order.³ The 1997 Report and Order did not require real time captioning for live newscasts, electing instead to continue to permit electronic newsroom reporting (ENR) as a method of captioning.

Recognizing the inferiority of ENR, the FCC issued an Order on Reconsideration on October 2, 1998, which amended its rules to impose real-time captioning requirements on a limited group of the largest video programming providers (such as NBC, CBS, ABC, and Fox) and their broadcast affiliates in the largest 25 television markets, and on nonbroadcast networks serving 50% or more of the total number of multichannel video programming distributor households (hence, cable and satellite television) beginning January 1, 2000.⁴

In response to the Order on Reconsideration, CBS filed a Request for Clarification on April 16, 1999.⁵ Specifically, CBS requested that the FCC allow program providers that voluntarily used electronic newsroom (ENR) closed captioning in the first half of 1997 to continue to use ENR except as necessary to comply with applicable FCC benchmarks. ENR captioning creates captions from a news script computer or teleprompter and is used commonly for live newscasts. However, only material that is scripted can be captioned using this technique.

² See § 305, Telecommunications Act of 1996.

³ *Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, MM Docket No. 95-176, FCC 97-279, Report and Order, adopted August 7, 1997 ("1997 Report and Order").

⁴ *Closed Captioning and Video Description of Video Programming: Implementation of Section 305 of the Telecommunications Act of 1996*, 63 Fed. Reg. 55959, FCC 98-236, October 2, 1998 ("Order on Reconsideration").

⁵ *Request for Clarification of CBS Corporation*, MM Docket No. 95-176, filed April 16, 1999.

Therefore, live field reports, breaking news, and sports and weather updates may not be closed captioned.⁶

TDI provides the following reply comments.

I. The Commission's Order On Reconsideration Is Clear On Its Face and Requires No Clarification.

CBS is incorrect when it states that the Order on Reconsideration requires clarification.⁷

The Order on Reconsideration states plainly that ENR closed captioning will not be acceptable for any nonexempt programming.⁸ The FCC determined that ENR closed captioning is inferior to real time closed captioning because it does not provide the same degree of access to the individuals who are deaf, hard of hearing, late deaf, and deaf-blind.⁹ Important information is often lost when ENR software is used to create captions. Without real time closed captioning, individuals who are deaf, hard of hearing, late deaf, and deaf-blind have limited access to live field reports, breaking news, and other vital information.

Individuals who have deafness and hearing loss are at a loss when they are forced to rely on ENR closed captioning. Such individuals, for example, find it difficult to rely on ENR

⁶ See *Federal Communications Commission Fact Sheet: Closed Captioning of Video Programming* (March 1999) (The benchmarks set a schedule for implementation of the FCC's new closed captioning rules over a ten year period).

⁷ See *Request for Clarification of CBS Corporation*, MM Docket No. 95-176, at 1.

⁸ *Closed Captioning and Video Description of Video Programming: Implementation of Section 305 of the Telecommunications Act of 1996: Video Programming Accessibility*, Order on Reconsideration, 63 Fed. Reg. 44949, FCC 98-236, MM Docket No. 95-176, ¶ 37-38, (released October 2, 1998).

⁹ See *Federal Communications Fact Sheet: Closed Captioning of Video Programming* (March 1999).

because late breaking crime reports (especially ones that discuss events in his neighborhood), weather updates and storm warnings, and sporting event updates, for example, are never captioned using ENR. People with deafness and hearing loss say that they often must rely on neighbors for information. Without full and equal access to this kind of information, deaf and hearing disabled Americans are relegated to second class citizenship.

If granted, the request of CBS would erode the force of the Order on Reconsideration and the 1997 FCC Report and Order, providing a widening gap to exempt important broadcasts from the real time closed captioning requirements. The request of CBS would undermine the FCC's policy by limiting the ability of persons with hearing disabilities to have full access to video programming.¹⁰

II. The Financial Impact on CBS for Implementing Real Time Closed Captioning is Neither Significant nor Burdensome.

The Order on Reconsideration applies only to major broadcast networks and their affiliates in the top 25 national television markets.¹¹ As NAD/CAN and SHHH state in their petitions, although real time closed captioning is more expensive than ENR, the economic burden of the Order on Reconsideration will not be a significant burden on CBS or the other major broadcast networks.¹² CBS has quoted a wide range estimate of the cost of implementing

¹⁰ See *Order on Reconsideration* (Separate Statement of Chairman William E. Kennard, released Sept. 17, 1998).

¹¹ *Id.*, at ¶ 38-39.

¹² See *Comments of the National Association for the Deaf and the Consumer Action Network on CBS Request for Clarification*, at 4; *Self Help for Hard of Hearing People, Inc. (SHHH) Response to CBS Corporation Request for Clarification of Commission's Closed Captioning Rules*, at 4.

this method on a per program basis to attempt to illustrate the economic burden it and the other major networks will face in implementing real time closed captioning.¹³ However, CBS has not provided any real economic analysis or proof demonstrating the extent of the alleged economic burden, nor has it provided a list or total number of programs that will be affected by the Order on Reconsideration. Other major networks and their affiliates have found cost-effective ways to implement real time closed captioning. For example, ABC-affiliate WJLA and NBC-affiliate WRC in Washington, DC, one of the top 25 national television markets, have enlisted corporate sponsorship to support their real time closed captioning.¹⁴ Sponsorship of closed captioning of programming creates additional revenue for the broadcast stations that can offset the cost of real time closed captioning, and potentially generate new revenue for the station. If these ABC and NBC affiliates can implement closed captioning so successfully, so can CBS and its affiliated stations. CBS has offered no evidence to justify special treatment.

Furthermore, the FCC's Order on Reconsideration does not limit broadcasters to a particular methodology to accomplish real time closed captioning.¹⁵ Broadcasters are free to utilize any technique, method, or technology to accomplish the stated objective.¹⁶

¹³ *See Request of CBS.*

¹⁴ WJLA and WRC have used real time closed captioning, provided by the National Captioning Institute, for well over two years. Statement of Mark Olingy, Engineer at WJLA, June 9, 1999; Statement of WRC Engineering Department, June 10, 1999. Closed captioning of WJLA programming is sponsored a by a number of companies including Bell Atlantic, Circuit City, and others. Closed captioning of WRC programming is underwritten by Bell Atlantic Mobile.

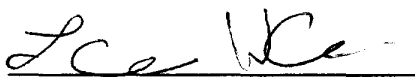
¹⁵ *Order on Reconsideration*, at ¶ 41.

¹⁶ *Id.*

CONCLUSION

For the foregoing reasons, TDI supports the responses filed by NAD/CAN and SHHH in urging the Commission to deny CBS's Request for Clarification in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Lawrence A. Walke", written over a horizontal line.

Lawrence A. Walke

Michael J. Mendelson

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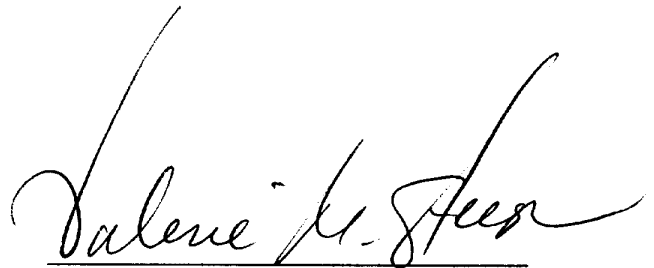
Dated: June 11, 1999

CERTIFICATE OF SERVICE

I, Valerie M. Steen, do hereby certify that on this 11th day of June 1999, I served a copy of the foregoing Telecommunications for the Deaf, Inc. Reply Comments To Request for Clarification of CBS Corporation by hand delivery or first class mail to the following active parties:

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A handwritten signature in black ink, reading "Valerie M. Steen", written over a horizontal line.

Valerie M. Steen